DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-1

DTE CABLE2-1

Please describe in detail the circumstances surrounding any negotiations leading to and the actual execution of the pole attachment agreement dated April 13, 1998, between Massachusetts Electric Company and Greater Worcester Cablevision, Inc. ("Greater Worcester").

RESPONSE:

Late in July of 1996, Mass Electric sent aerial license agreements covering poles in our central Massachusetts (Worcester and surrounding towns) and Western Massachusetts (Chicopee and surrounding towns) cable systems. By letter dated August 28, 1996, I responded with comments on the terms and conditions of the proposed license agreement. Although there was no response by Mass. Electric to the August 28, 1996 letter, Mass. Electric sent, by letter dated September 9, 1997, another pole attachment agreement covering the Worcester area systems. We responded with comments on the proposed terms and conditions in a letter dated September 23, 1997. In November 1997, Mass Electric notified us of pole license fee increases. In December 1997, Dick Tuthill, General Manager of the Central Region, notified Mass Electric that the proposed fee increases were unacceptable and that NECTA would be representing us in this matter. Meanwhile, Jack Murphy, our Utilities Manager was finding that Mass Electric would not release poles needed for new construction in Northboro unless we first signed MECo's proposed agreement. After trading phone calls with Paul Anundson for several weeks, I finally reached him and told him we wanted to move ahead with the agreement. By letter dated January 8, 1998, he provided Mass. Electric's response to our previous comments. After some further telephone conversations regarding terms and conditions, which went nowhere, we signed the agreement and sent it to him by letter dated March 30, 1998 and expressing our reservations about terms and conditions and having to sign the proposed agreement (in addition to the rate dispute which had been the subject of a protest letter and which was being handled separately by NECTA on behalf of Greater Worcester). At all times since MECo proposed to increase its pole attachment fees, MECo was aware that Greater Worcester had protested the proposed increase and that the disputed fees were being negotiated separately by MECo and NECTA. At no

time did Greater Worcester agree to MECo's proposed attachment fees which are the subject of the Complaint.

Date: August 6, 1998 Responsible Witness: Barbara Burns, General Counsel-Greater Media

DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-2

DTE-CABLE2-2 Please describe in detail the circumstances surrounding any negotiations leading to and the actual execution of the pole attachment agreement dated March 18, 1998, between Massachusetts Electric Company and MediaOne of Massachusetts, Inc; MediaOne of Pioneer Valley, Inc; MediaOne of Southern New England, Inc; MediaOne of New England, Inc; MediaOne Enterprises, Inc. and MediaOne of New England, Inc.(collectively "Media One").

RESPONSE: The aerial License Agreement (Aerial License") executed on March 18, 1998 between MediaOne and its subsidiaries (MediaOne") and New England Electric System ("NEES") companies, including Massachusetts Electric Company ("MECO"), was a standard form agreement that was created and drafted by NEES.

Bob Thomas on behalf of MediaOne and Paul Anundson on behalf of NEES negotiated the Aerial License. Only two substantive provisions of the Aerial License were subject to any negotiation and were intended to resolve a long standing dispute over the right of MediaOne to overlash additional facilities on its existing strand attached to NEES' poles under Section 7.2 of the Aerial License. These negotiations focused on the size and number of overlash cables permitted under the Aerial License and the definition of "Attachment" in Section 1.2, as it pertained to the term "wireless hardware." Both of these provisions were revised in the final document to reflect the parties' negotiation Other provisions of the Aerial License were discussed, but were not revised in the executed agreement. These include Section 8.5, Rearrangement or Transfer of Pole Attachments; Section 11.1, Inspection; Section 13.1, Liability and Section 16.3, Assignment.

At no time during the negotiations of the Aerial License were pole attachment rates discussed. Bob Thomas had no authority to negotiate pole attachment rates on behalf of MediaOne, a fact of which Paul Anundson and NEES were aware.

MediaOne had earlier designated the New England Cable Television Association, Inc. ("NECTA") to negotiate pole attachment rates with NEES Companies, as it had done in the past with NEES and other utility companies.

In fact, MediaOne protested MECO's November, 1997 proposed pole attachment rate increase long before the Aerial License was executed on March 18, 1998. Pursuant to its then current agreement, on December 10, 1997, MediaOne filed a written objection to MECO's proposed pole attachment rate increases.

MediaOne at no time agreed-in any respect-to MECO's proposed pole attachment rate increases. At the time of the execution of the Aerial License, both parties were aware that MediaOne had objected to the proposed rate increases, and that NECTA was pursuing MediOne's legal interests as its representative. For that reason, rates were simply not a subject of negotiation between the parties.

Date: August 6, 1998

Responsible Witness: John Fouhy, Corporate Counsel-MediaOne

DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-3

DTE-CABLE2-3

Please identify any grounds, including duress, upon which Greater Worcester seeks to avoid the pole attachment agreement dated April 13, 1998. As part of your response, identify:

- a. the facts upon which such grounds are based;
- b. the identify of all witnesses with knowledge of those facts; and
- c. attach to your response all documents which support such facts.

RESPONSE:

Greater Worcester has not sought to "avoid" a pole attachment agreement. Rather, Greater Worcester maintains that the rates determined in this proceeding should be effective as of February 1, 1998, based upon the negotiations between MECo and NECTA. This negotiated effective date of the rates to be determined in this case enabled the parties to continue their negotiations until after the issuance of the Department's decision in A-R Cable Services, Inc., D.P.U./D.T.E. 97-82 (1998). In the absence of this negotiated effective date, Greater Worcester would be entitled to relief from MECo's excesive pole attachment charges effective as of the date of the filing of the Complaint in this case under the Department's Greater Media decision, D.P.U. 91-218 (1992). The Department's ruling in Greater Media, that execution of a pole attachment license does not waive the right of the licensee to file a complaint and obtain relief from unreasonable rates, terms or conditions, is also supported by extensive Federal Communications Commission precedent. See, e.g., Mile Hi Cable Partners LP v. Public Service of Colorado, DA 98-1396, 1998 FCC LEXIS 3468 (July 14, 1998).

Greater Worcester maintains that its signing a pole attachment license with MECo pending the resolution of the pole rate dispute was forced upon it as a matter of duress, since it could not obtain permission from MECo to attach to MECo poles on Boundary Street in Marlboro needed in order to serve a new development located on Winsor Lane in Northboro unless it first signed the new license agreement with MECo. These facts were explained to Greater Worcester's Utilities Manager, Jack Murphy, by MECo's Paul Anundson. MECo continued to process Greater Worcester's

requests for locations within communities identified in the previous executed agreement between the parties but would not permit any attachments in Marlboro without the execution of the new agreement. The executed agreement, however, does not reference the Marlboro attachments, even though those attachments have been processed and approved since the execution of the new pole agreement. Without executing the new agreement, Greater Worcester would have been unable to serve new customers in a portion of Northboro.

Date: August 6, 1998

Responsible Witness: Barbara Burns, General Counsel - Greater Media

DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-4

DTE-CABLE2-4

Please identify any grounds, including duress, upon which MediaOne seeks to avoid the pole attachment agreement dated March 18, 1998. As part of your response, identify:

- a. the facts upon which such grounds are based:
- b. the identity of all witnesses with knowledge of those facts; and
- c. attach to your response all documents which support such facts.

RESPONSE:

MediaOne and its subsidiaries (MediaOne) does not seek to avoid the Aerial License Agreement executed on March 18, 1998 ("Aerial License"). MediaOne contends that the pole attachment charges to be determined by the Department are to be effective as of February 1, 1998, pursuant to negotiation between MECo and NECTA. This negotiated effective date enabled the parties to continue their rate negotiations until after the Department's decision in D.P.U./D.T.E. 97-82 (1998). In the absence of this negotiated effective date, under the Department's decision in Greater Media, D.P.U. 91-218 (1992), relief would be granted as of the date of filing of the Complaint. The Department's ruling in *Greater Media*, that the execution of a license agreement does not waive the right of the licensee to seek and obtrain relief from unreasonable rates, terms or conditions, is also supported by extensive Federal Communications Commission precedent. See, e.g., Mile Hi Cable Partners LP v. Public Service Co. of Colorado, DA 98-1396, 1998 FCC LEXIS 3468 (July 14, 1998).

MediaOne further contends that Appendix I of the Aerial License, which sets forth the annual pole attachment fees for the New England Electric System("NEES") Companies, including Massachusetts Electric Company (MECo) is not part of the Aerial License because it was never negotiated or agreed to by the parties. Both parties were aware that prior to the March 18, 1998 execution of the Aerial License, MediaOne had objected in writing to the proposed rates and had notified MECo that the New England Cable Television Association, Inc. ("NECTA") was its designated legal representative in the dispute. The proposed disputed pole attachment rates were not a part of the Aerial License because all parties were on notice that NECTA was in the process of conducting rate

negotiations on MediaOne's behalf. Mediaone asserts that the rates determined by the outcome of this proceeding should be incorporated into the March 13, 1998, for effect as of February 1, 1998.

At no time during the limited negotiations between MECo and MediaOne was a revised rate schedule containing the disputed rates ever presented by MECo to MediaOne. Rather, MECo placed that rate schedule into the execution copy without notice to MediaOne.

- a. Please see the response to DTE-CABLE 2-2
- b. The following persons have knowledge of the facts upon which MediaOne's Response is based:(1) Bob Thomas, Outside Plant Utilities Manager, MediaOne; and (2) Paul Anundson, NEES Companies
 - c. Attached please find the following documents:

-March 13, 1998 Aerial License (attached to Complaint as Exhibit 5 and not attached to this response)

- -November 20, 1997 MECo rate increase notice;
- -December 10, 1997 letter from MediaOne to Craig Eaton, counsel for NEES, objecting to pole rental rate increase, and designating NECTA as legal representing in dispute
- June 17, 1998 letter from MediaOne to NEES.

Date: August 6, 1998

Responsible Witness: John Fouhy, Corporate Counsel-MediaOne

DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-5

DTE-CABLE2-5 Please describe in detail the facts upon which the following allegation is based:

"Greater Worcester signed this pole attachment license agreement under duress, as MECo refused to process any new attachments needed by Greater Worcester as part of a multi-million dollar system upgrade unless it signed the license agreement." (Complaint at 8).

Provide the identity of all witnesses with knowledge of these facts, and attach to your response all documents which support such facts .

RESPONSE: See the response to DTE-CABLE 2-3.

Date: August 6, 1998

Responsible Witness: Barbara Burns, General Counsel-Greater Media

DOCKET NO. D.T.E. 98-52

RESPONSE OF COMPLAINANTS TO DTE-CABLE2-6

DTE-CABLE2-6 Please describe any legal or administrative remedies pursued by Greater

Worcester Cablevision in response to any alleged refusal of Massachusetts

Electric Company to process any new cable attachments.

RESPONSE: Greater Worcester did not pursue any such remedies.

Date: August 6, 1998

Responsible Witness: Barbara Burns, General Counsel-Greater Media